

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**KD GRAPHICS, INC. and  
JEFFREY KWAIT,**

**Plaintiffs,**

**VS.**

**TROPICAL GRAPHICS, INC. and  
PAUL HIRST,**

## Defendants.

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**Civil Action No. 02-CV-4041**

## JURY TRIAL DEMANDED

## ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of Defendants' Cross-Motion for Entry of Default Judgment against Plaintiffs and pursuant to Federal Rules of Civil Procedure 55(a) and 55(b)(2), it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs KD Graphics, Inc. and Jeffrey Kwait are liable to Defendants Tropical Graphics and Paul Hirst in the amount of \$1933.17 plus interest and further damages as may be awarded in a hearing on damages currently scheduled for December 17, 2002.

**J.**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**KD GRAPHICS, INC. and  
JEFFREY KWAIT,**

**Plaintiffs,**

**VS.**

**TROPICAL GRAPHICS, INC. and  
PAUL HIRST,**

## Defendants.

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**Civil Action No. 02-CV-4041**

## JURY TRIAL DEMANDED

**DEFENDANTS' CROSS-MOTION FOR ENTRY  
OF DEFAULT JUDGMENT AGAINST PLAINTIFFS**

AND NOW come Defendants Tropical Graphics, Inc. and Paul Hirst, by their counsel, Reed Smith LLP, and hereby request the entry of default judgment against Plaintiffs KD Graphics, Inc. and Jeffrey Kwait, and in support thereof state as follows:

1. On August 16, 2002, Defendants filed an Answer, Affirmative Defenses, and a Counterclaim against Plaintiffs. Defendants' Counterclaim included claims against Plaintiffs for, inter alia, breach of contract (Count I), breach of implied contract (Count II), unjust enrichment/quantum merit (Count III), alter-ego breach of contract and breach of implied contract (Count IV) and intentional interference with business relations (Count V).

2. On September 5, 2002, Plaintiffs served Defendants with a Motion to Dismiss Counts IV and V of the Answer, Affirmative Defenses, and Counterclaim. The Court denied the Motion to Dismiss on September 24, 2002.

3. Defendants filed an Amended Counterclaim on September 19, 2002. The Amended Counterclaim added allegations to Count IV and adjusted the damages claimed in

Count I. A blacklined copy of the Amended Counterclaim, showing changes from the initial Counterclaim, is attached as "Exhibit A."

4. Defendants served the Amended Counterclaim on Plaintiffs by first class mail on September 19, 2002.

5. Pursuant to Federal Rule of Civil Procedures 15 and 6, Plaintiffs had until October 7, 2002 to respond to Defendants' Amended Counterclaim. Rule 15 allows a party to respond to an amended pleading within ten days after service of the amended pleading or within the time allowed to respond to the original pleading, whichever is longer. A response to the initial Counterclaim, served on August 16, 2002, was due on September 5, 2002. Ten days from service of the Amended Counterclaim, September 19, 2002, excluding Saturday and Sundays and adding three (3) extra days for mailing under Rule 6, was October 7, 2002. Thus, Plaintiffs' response to the Amended Counterclaim had to be filed and served on or before October 7, 2002.

6. The Clerk entered default against Plaintiffs on October 16, 2002 for failing to respond to the Amended Counterclaim.

7. Default judgment should be entered against Plaintiffs and in favor of Defendants, pursuant to Federal Rule of Civil Procedure 55 (a) and (b) (2).

8. Defendants seek sum certain damages in the amount of \$1933.17 plus additional damages, costs, and fees to be determined by this Court. Defendants request damages in the amount of \$1933.17 plus additional damages as this Court may award at the hearing presently scheduled for December 17, 2002.

9. Defendants incorporate by reference all of their arguments in the brief filed concurrently with this motion.

WHEREFORE Defendants respectfully request entry of default judgment against Plaintiffs and in favor of Defendants.

Respectfully submitted,

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Tracy Zurzolo Frisch, Esquire ID #71072  
Steven T. Voigt, Esquire ID #85091  
Reed Smith LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103  
(215) 851-8100

Counsel for Defendants

Date: October \_\_\_, 2002

**CERTIFICATE OF SERVICE**

I, Steven T. Voigt, hereby certify that a true and correct copy of the foregoing Defendants' Cross-Motion for Entry of Default Judgment Against Plaintiffs and Brief in Opposition to Plaintiffs' Motion to Open Default and in Support of Defendants' Cross-Motion for Entry of Default Judgment Against Plaintiffs was served this \_\_\_\_ day of October, 2002, by first class U.S. mail, postage prepaid, upon the following:

Leon W. Silverman, Esquire  
Andrew Lapat, Esquire  
Stein and Silverman, P.C.  
230 S. Broad Street, 18<sup>th</sup> Floor  
Philadelphia, PA 19102

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Steven T. Voigt